

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-01/11

Date: 15 July 2011

**PRE-TRIAL CHAMBER II**

**Before:** Judge Ekaterina Trendafilova, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Cuno Tarfusser

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF THE PROSECUTOR V. WILLIAM SAMOEI RUTO, HENRY  
KIPRONO KOSGEY AND JOSHUA ARAP SANG**

**Confidential *ex parte*, Prosecution Only**

**Prosecution's response to the Single Judge's order  
to provide a summary of potentially exculpatory materials**

**Source:** Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**  
Luis Moreno-Ocampo, Prosecutor  
Fatou Bensouda, Deputy Prosecutor

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms. Silvana Arbia

**Deputy Registrar**

Mr. Didier Preira

**Victims and Witnesses Unit**

**Defence Support Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. On 28 June 2011, the Prosecution submitted the "Prosecutor's First Application Pursuant to Rule 81(2) and 81(4) for Redactions to Potentially Exculpatory Evidence".<sup>1</sup> This application included a request to redact the final 11 pages from KEN-OTP-0014-0502 (0513 until 0523), on the grounds that:
  - These 11 pages pertain to a person who is not an ICC witness;
  - These 11 pages are not relevant to the case; and
  - These 11 pages do not contain any potentially exonerating material.<sup>2</sup>
2. On 14 July 2011, the Single Judge authorized the non-disclosure of these 11 pages, but also ordered the Prosecution to provide a meaningful summary of the documentation which reveals all potentially exculpatory facts.<sup>3</sup>
3. The Prosecution can provide such a summary, but, as the Prosecution is of the opinion that these 11 pages do not contain information which is relevant to the case or which is of a potentially exonerating nature, the Prosecution seeks further guidance from the Single Judge about the information which should be contained in such a summary.

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<sup>1</sup> ICC-01/09-01/11-150-Conf-Exp and related annexes.

<sup>2</sup> ICC-01/09-01/11-150-Conf-Exp-AnxC1, p. 2.

<sup>3</sup> ICC-01/09-01/11-195-Conf, paras. 13-15 and p. 8.

4. In the Prosecution's view, the Defence would suffer no prejudice from the non-disclosure of these 11 pages even if a summary is not produced.



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Luis Moreno-Ocampo

Prosecutor

Dated this 15<sup>th</sup> day of July 2011

At The Hague, The Netherlands